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HOUSE BILL 640

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Janice E. Arnold-Jones

AN ACT

RELATING TO ELECTIONS; ALLOWING VOTERS TO WRITE IN THE  
CANDIDATE OF THEIR CHOOSING WHEN VOTING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 1-8-36.1 NMSA 1978 (being Laws 1981,  
Chapter 156, Section 1, as amended) is amended to read:

"1-8-36.1. PRIMARY ELECTION LAW--WRITE-IN CANDIDATES.--

~~[A. Write-in candidates are permitted in the  
primary election only for the offices of United States  
representative, members of the legislature, district judges,  
district attorneys, public regulation commission, state board  
of education, magistrates and any office voted upon by all  
voters of the state.~~

~~B. A person may be a write-in candidate only for  
nomination by the major political party with which he is~~

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1 ~~affiliated as shown by his certificate of registration, and~~  
2 ~~such person shall have the qualifications to be a candidate in~~  
3 ~~the primary election for the political party for which he is a~~  
4 ~~write-in candidate.~~

5 ~~C. A person desiring to be a write-in candidate for~~  
6 ~~one of the offices listed in Subsection A of this section in~~  
7 ~~the primary election shall file with the proper filing officer~~  
8 ~~a declaration of intent to be a write-in candidate. Such~~  
9 ~~declaration of intent shall be filed before 5:00 p.m. on the~~  
10 ~~second Tuesday in March.~~

11 ~~D.]~~ A. If the name of the person for whom a voter  
12 desires to vote does not appear on the primary election ballot,  
13 the voter may write in the name of that person.

14 B. A write-in vote shall be counted and canvassed  
15 only if:

16 (1) the name written [~~in is the name of a~~  
17 ~~declared write-in candidate and]~~ shows two initials and last  
18 name; first name, middle initial or name and last name; or  
19 first and last name; [~~or the full name as it appears on the~~  
20 ~~declaration of intent to be a write-in candidate]~~ and  
21 misspellings of the above combinations that can be reasonably  
22 determined by a majority of the members of the precinct board  
23 to identify a [~~declared]~~ write-in candidate; and

24 (2) the name is written [~~in the proper slot on~~  
25 ~~the voting machine or]~~ on the proper line provided on [~~an~~

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1 ~~absentee ballot or emergency] a paper ballot for write-in~~  
2 ~~votes. [for the office for which the candidate has filed a~~  
3 ~~declaration of intent.~~

4 ~~E. At the time of filing the declaration of intent~~  
5 ~~to be a write-in candidate, the write-in candidate shall be~~  
6 ~~considered a candidate for all purposes and provisions relating~~  
7 ~~to candidates in the Election Code, including the obligations~~  
8 ~~to report pursuant to the Campaign Reporting Act, except that~~  
9 ~~he shall not be entitled to have his name printed on the~~  
10 ~~ballot.~~

11 ~~F. No unopposed write-in candidate shall have his~~  
12 ~~nomination certified unless he receives at least the number of~~  
13 ~~write-in votes in the primary election as he would need~~  
14 ~~signatures on a nominating petition pursuant to the~~  
15 ~~requirements set out in Section 1-8-33 NMSA 1978.~~

16 ~~G.]~~ C. A write-in vote shall be cast by writing in  
17 the name. As used in this section, "write-in" does not include  
18 the imprinting of any name by rubber stamp or similar device or  
19 the use of preprinted stickers or labels."

20 Section 2. Section 1-11-2 NMSA 1978 (being Laws 1969,  
21 Chapter 240, Section 212, as amended) is amended to read:

22 "1-11-2. CONTENTS OF PROCLAMATION.--The proclamation  
23 shall:

- 24 A. give notice of the election;  
25 B. set forth the purpose of the election;

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1 C. list the offices to be filled;

2 D. list all properly certified candidates for each  
3 of the offices to be filled;

4 ~~[E. list the declared write-in candidate's name and~~  
5 ~~party affiliation;~~

6 ~~F.]~~ E. list the names of all precinct board members  
7 and the precinct to which they are appointed; and

8 ~~[G.]~~ F. give the address or location of the polling  
9 place in each precinct where the election is to be held."

10 Section 3. Section 1-12-19.1 NMSA 1978 (being Laws 1981,  
11 Chapter 156, Section 2, as amended) is amended to read:

12 "1-12-19.1. GENERAL ELECTIONS--SPECIAL ELECTIONS--WRITE-  
13 IN CANDIDATES.--

14 ~~[A. A person desiring to be a write-in candidate in~~  
15 ~~a special election for United States representative or a~~  
16 ~~statewide special election shall file with the proper filing~~  
17 ~~officer a declaration of intent to be a write-in candidate.~~  
18 ~~The declaration of intent shall be filed between 9:00 a.m. and~~  
19 ~~5:00 p.m. on the sixty-third day immediately preceding the~~  
20 ~~election. A person desiring to be a write-in candidate in a~~  
21 ~~general election shall file the declaration of intent between~~  
22 ~~9:00 a.m. and 5:00 p.m. on the day after the primary election.~~

23 B. ~~The form of the declaration of intent shall be~~  
24 ~~prescribed by the secretary of state and shall contain a sworn~~  
25 ~~statement by the candidate that the candidate is qualified to~~

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1 ~~be a candidate for and to hold the office for which the~~  
2 ~~candidate is filing.~~

3 ~~C. At the time of filing the declaration of intent~~  
4 ~~to be a write-in candidate, the write-in candidate shall be~~  
5 ~~considered a candidate for all purposes and provisions relating~~  
6 ~~to candidates in the Election Code, including the obligation to~~  
7 ~~report under the Campaign Reporting Act, except that the~~  
8 ~~candidate shall not be entitled to have the candidate's name~~  
9 ~~printed on the ballot.~~

10 ~~D. The secretary of state shall, not less than ten~~  
11 ~~days before the general election, certify the names of the~~  
12 ~~declared write-in candidates to the county clerks of every~~  
13 ~~county affected by such candidacy.~~

14 ~~E. No person shall be a write-in candidate in the~~  
15 ~~general election who was a candidate in the primary election~~  
16 ~~immediately prior to the general election.~~

17 ~~F.]~~ A. If the name of the person for whom a voter  
18 desires to vote does not appear on the general or special  
19 election ballot, the voter may write in the name of that  
20 person.

21 B. A vote for a write-in candidate shall be counted  
22 and canvassed only if:

23 (1) the name written [~~in is the name of a~~  
24 ~~declared write-in candidate and~~] shows two initials and last  
25 name; first name, middle initial or name and last name; or

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1 first and last name [~~or the full name as it appears on the~~  
2 ~~declaration of intent to be a write-in candidate~~]; and  
3 misspellings of the above combinations that can be reasonably  
4 determined by a majority of the members of the precinct board  
5 to identify a [~~declared~~] write-in candidate; and

6 (2) the name is written [~~in the proper office~~  
7 ~~or entered upon the keyboard on the voting machine or~~] on the  
8 proper line provided on a [~~marksense ballot, absentee ballot or~~  
9 ~~emergency~~] paper ballot for write-in votes for the office.  
10 [~~for which the candidate has filed a declaration of intent.~~

11 G. ~~No unopposed write-in candidate shall have an~~  
12 ~~election certified unless the candidate receives at least the~~  
13 ~~number of write-in votes as the candidate would need signatures~~  
14 ~~on a nominating petition pursuant to the requirements in~~  
15 ~~Section 1-8-33 NMSA 1978.~~

16 H.] C. A write-in vote shall be cast by writing in  
17 the name. As used in this section, "write-in" does not include  
18 the imprinting of any name by rubber stamp or similar device or  
19 the use of preprinted stickers or labels."